

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN ROBERT MCCOOL,

Petitioner,

v.

KENNETH D. KYLER and
DISTRICT ATTORNEY OF SNYDER
COUNTY,

Respondents.

No. 4:00-CV-01418

(Judge Brann)

(Magistrate Judge Mehalchick)

ORDER

NOVEMBER 25, 2019

In 2000, John Robert McCool filed a 28 U.S.C. § 2254 petition seeking to vacate his convictions and sentence; that petition was dismissed in 2001 because McCool failed to exhaust his state court remedies.¹ Currently pending before the Court is McCool's Fed. R. Civ. P. 60(b)(6) motion—filed in March 2019—as well motions for summary adjudication and for an order directing officials to return certain mail to McCool.²

In October 2019, Magistrate Judge Karoline Mehalchick issued a Report and Recommendation recommending that this Court deny McCool's Rule 60(b)(6)

¹ Docs. 1, 17, 18.

² Docs. 19, 23, 24.

motion on the ground that the motion is untimely.³ Magistrate Judge Mehalchick further recommends denying as moot McCool’s remaining motions.⁴ McCool filed timely objections to the Report and Recommendation.⁵

“If a party objects timely to a magistrate judge’s report and recommendation, the district court must ‘make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’”⁶ Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge’s findings or recommendations.⁷ Upon de novo review, the Court finds no error in Magistrate Judge Mehalchick’s conclusion that McCool’s motion is untimely, as McCool presents “no persuasive explanation”⁸ for the nearly eighteen-year delay in filing his Rule 60(b) motion. Consequently, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Karoline Mehalchick’s Report and Recommendation (Doc. 30) is **ADOPTED**;
2. McCool’s Rule 60(b)(6) motion (Doc. 19) is **DENIED**; and

³ Doc. 30.

⁴ *Id.*

⁵ Doc. 32.

⁶ *Equal Emp’t Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)).

⁷ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

⁸ *United States v. Mishra*, No. 19-1814, 2019 WL 5957379, at *1 (3d Cir. Nov. 13, 2019).

3. McCool's motion for summary adjudication (Doc. 23) and for an order directing prison officials to return certain mail (Doc. 24) are **DENIED** as moot.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

United States District Judge